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IN THE COURT OF APPEALS OF INDIANA

J'NEANE C. BANTZ, Personal Representative of the Estate of VERLIN LEE BANTZ,	)	
Appellant-Plaintiff,	)	
vs.	)	No. 05A05-0712-CV-738
AMERICARE COMMUNITIES & ASSISTED LIVING OF PORTLAND AND HARTFORD CITY, LLC,	)	
Appellee-Defendant.	)	

APPEAL FROM THE BLACKFORD CIRCUIT COURT
The Honorable Dean A. Young, Judge
Cause No. 05C01-0705-PL-102

June 12, 2008

MEMORANDUM DECISION - NO FOR PUBLICATION

BAKER, Chief Judge

Appellant-plaintiff J'Neane C. Bantz, personal representative of the Estate of Verlin Lee Bantz (the Estate), appeals the trial court's order granting summary judgment in favor of appellee-defendant Americare Communities & Assisted Living of Portland and Hartford City, LLC (Americare), on the Estate's complaint. Specifically, the Estate argues that the trial court erroneously concluded that Americare did not own, operate, supervise, or in any way participate in Verlin's care and treatment. Finding no error, we affirm.

FACTS

Americare owns real estate that is used for two assisted living facilities[1] in Hartford City and Portland. Americare has no employees. Instead, since 2002, it has leased real estate in Hartford City to CrownPointe Communities, LLC, which operates an assisted living facility called CrownPointe of Hartford City (CrownPointe), located at 100 Independence Parkway in Hartford City.

On January 12, 2005, Verlin was admitted to a licensed skilled nursing facility[2] called the Americare Living Center of Hartford City (Living Center), located at 715 North Mill Street in Hartford City. Neither Americare nor CrownPointe has any affiliation with the Living Center. It is undisputed that J'Neane placed Verlin in the Living Center nursing home, that she visited him there, and that Verlin never resided at any other nursing home or

[1] An assisted living facility "provides some supervision and assistance with activities of daily living, but does not provide skilled nursing or medical care." Appellant's Br. p. 5 n.3.

[2] A skilled nursing facility "is also commonly known as a nursing home. This type of facility provides skilled nursing and related services to people who can no longer care for themselves. See 42 U.S.C. § 1395i-3." Appellee's Br. p. 5 n.2.

assisted living facility in Hartford City. Neither Americare nor CrownPointe received any money for any services provided to Verlin.

On June 3, 2005, Verlin, who was still a resident of the Living Center, died. Subsequently, the Indiana Department of Health and Human Services investigated the Living Center and concluded that the center had failed to meet the required standard of quality care. On May 31, 2007, the Estate filed a complaint against Americare for medical malpractice. In its answer, Americare argued that it was not the proper party in interest.

On July 5, 2007, Americare filed a motion to dismiss that was converted into a motion for summary judgment when it attached exhibits and affidavits to the motion. Americare based its motion on the fact Verlin was never a resident of a facility owned, operated, supervised by, or in any way affiliated with Americare. Following a hearing, the trial court granted Americare's motion on October 2, 2007, finding as follows:

> 4. That [Americare] does not own, operate, supervise, or in any way participate in the care and treatment of patients residing at 715 N. Mill Street, Hartford City, Indiana.
>
> 5. That [Americare], along with [the Living Center], may share a common registered agent . . . .
>
> 6. That a common registered agent does not mean ownership, operation, supervision, or the ability to direct or otherwise control services provided by otherwise independent business entities, or that would impose a duty in this case.

Appellant's App. p. 99-100. On November 13, 2007, the trial court clarified its earlier order to emphasize that it had not dismissed the case based on a conclusion that the Estate had failed to name a real party in interest; instead, it had granted summary judgment in Americare's favor:

> [f]or reasons stated in the Courts original Order of October 2, 2007, the named defendant in this cause had no duty of care with respect to plaintiff's decedent. In the absence of a duty, there can be no breach. Accordingly, plaintiff's Complaint not only fails to state a claim against the named defendant upon which relief may be granted, but also the Court can find no genuine issue of material fact that exists between this plaintiff and this defendant, and accordingly, the defendant is entitled to judgment as a matter of law.

Id. at 5. The Estate now appeals.

DISCUSSION AND DECISION

Although Americare originally sought to dismiss the complaint pursuant to Trial Rule 12(B)(6), in attaching exhibits and affidavits to the motion, the trial court properly treated the motion as one for summary judgment. Ind. Trial Rule 12(B)(6) (providing that if a movant attaches matters outside the pleadings to a motion to dismiss, "the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56"). Summary judgment is appropriate only if the pleadings and evidence considered by the trial court show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Owens Corning Fiberglass Corp. v. Cobb, 754 N.E.2d 905, 909 (Ind. 2001); see also Ind. Trial Rule 56(C). On a motion for summary judgment, all doubts as to the existence of material issues of fact must be resolved against the moving party. Owens Corning, 754 N.E.2d at 909. Additionally, all facts and reasonable inferences from those facts are construed in favor of the nonmoving party. Id. If there is any doubt as to what conclusion a jury could reach, then summary judgment is improper. Id.

An appellate court faces the same issues that were before the trial court and follows the same process. Id. at 908. The party appealing from a summary judgment decision has

the burden of persuading the court that the grant or denial of summary judgment was erroneous. Id. When a trial court grants summary judgment, we carefully scrutinize that determination to ensure that a party was not improperly prevented from having his or her day in court. Id.

Here, there is simply no evidence whatsoever that links Americare to the Living Center, the facility in which Verlin resided and, tragically, passed away. Americare has never operated the Living Center. It has never received payments of any kind relating to the Living Center or to Verlin's care. Americare exercises no direction or control over the Living Center. Finally, Verlin never resided in any facility other than the Living Center. Because Americare did not provide care to Verlin, there was no relationship that would give rise to a duty that must be proved as part of a medical malpractice claim. See, e.g., Dixon v. Siwy, 661 N.E.2d 600, 607 (Ind. Ct. App. 1996) (holding that the determination of whether a healthcare provider-patient relationship exists is a question of law); Johnson v. Padilla, 433 N.E.2d 393, 396 (Ind. Ct. App. 1982) (finding no duty when the doctor did not treat the patient). Under these circumstances, the trial court properly granted summary judgment in Americare's favor.

The judgment of the trial court is affirmed.

KIRSCH, J., and BAILEY, J., concur.